kinds of goods is the same, to permit a company to charge different prices is to give it a right to hamper prospering industries and pamper those in distress, against that public policy which lies at the root of the law of public service. See *Tift* v. *Southern Railway Co.*, 138 Fed. 753. And as to customers receiving identical service, to admit that the successful shall pay more than the struggling is simply to say that a railroad or telephone corporation may levy a progressive income tax. By the principal case it is decided that one in the public employment may not charge what the particular customer can pay; it remains to be determined that he may not charge for a particular service what the traffic will bear. See *Western Union Telegraph Co.* v. *Call Publishing Co.*, 181 U. S. 92.

TRUSTS — RESTRAINTS ON ALIENATION OF CESTUI'S INTEREST — SPENDTHRIFT TRUST CREATED BY BENEFICIARY. — X, a spendthrift, conveyed an estate to Y, on trust to pay X during his life such sums out of the profits as Y should think proper. It was expressly provided that Y should not be compellable to pay X any part of the profits; and that on the death of X the *corpus* together with accumulations was to go to the appointees of X. *Held*, that the estate is liable for the subsequent debts of X. *Petty* v. *Moores Brook Sanitarium*, 67 S. E. 355 (Va.).

Even in jurisdictions where spendthrift trusts are upheld when created by a third party, they are invalid if founded for the grantor's own benefit. *Schenck* v. *Barnes*, 156 N. Y. 316; *Jackson* v. *Von Sedlitz*, 136 Mass. 342. It is axiomatic, however, that unless a *cestui* has an enforceable claim against his trustee there is nothing which his creditors can reach. *In re Coleman*, 39 Ch. D. 443; *Davidson's Executors* v. *Kemper*, 79 Ky. 5. Where the trustee has discretion merely as to the mode of applying the fund, the *cestui's* interest is available for his debts. *Snowdon* v. *Dales*, 6 Sim. 524; *Stewart* v. *Madden*, 153 Pa. St. 445. But in the case considered the *cestui* has no claim which equity would enforce, and it is difficult to see against what interest the creditor levied equitable execution. *Holmes* v. *Penny*, 3 K. & J. 90. See GRAY, RESTRAINTS ON ALIENATION, 2 ed., §§ 163–166. The creditor is amply protected in such a case by holding the trustee accountable for actual payments to the *cestui* after notice of the claim. *In re Neil*, 62 L. T. N. S. 649. The court, following a recent decision, regards the scheme employed as an evasion of the law and hence against public policy. *Menken* v. *Brinkley*, 94 Tenn. 721. If this is true, it is submitted that the remedy is to have the conveyance set aside rather than to levy equitable execution.

TRUSTS — RESULTING TRUSTS — EFFECT OF PARTIAL FAILURE OF CHARITABLE TRUST ON POWER OF SALE. — A devised land to his executors on trust to sell the same and divide the proceeds among named charities. As to eleven-seventeenths of the land the trust failed. The executors sold the land to B, and the heirs asked for a partition thereof. *Held*, that although the eleven-seventeenths passed to the heir as intestate property, the executors under their power of sale gave good title to the whole. *Bender* v. *Paulus*, 90 N. E. 994 (N. Y.).

It has been held that where a trust fails for vagueness, the devise fails as well and the property goes as intestate. *Scott* v. *Brownrigg*, 9 L. R. Ir. 246. But according to the prevailing view, if the purposes of a trust fail partially or wholly, the devisees hold the property on a resulting trust to the heirs. *Longley* v. *Longley*, L. R. 13 Eq. 137; *Sims* v. *Sims*, 94 Va. 580. Since, however, a resulting trust connotes something analogous to intestacy as to the beneficial interest, and since the testator devised his absolute interest to the executors, the latter should hold rather on a constructive trust. See 5 HARV. L. REV. 392, 393. In New York, statutes making invalid certain gifts to charities are regarded as limiting the testator's power to give, so that the devise fails to the same extent as the trust and the legal title goes *pro tanto* to the heirs. *Jones* v. *Kelly*, 170 N. Y. 401; *Chamberlain* v. *Chamberlain*, 43 N. Y. 424. For this construction there is some authority. *Doe* v. *Wrighte*, 2 B. & Ald. 710. *Contra*, *Russell* v. *Jackson*, 10 Hare